

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PATRICIA MARTINEZ,

Plaintiff,

v.

No. CIV 09-0281 JB/KBM

MICHAEL MARTINEZ and
LYNDA LATTA,

Defendants.

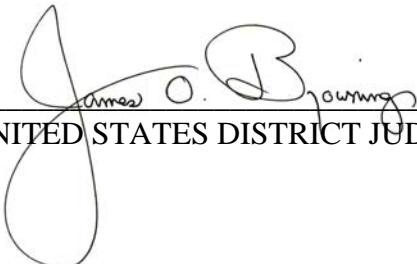
**MEMORANDUM OPINION AND ORDER ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATIONS**

THIS MATTER comes before the Court on the Defendants' Motion to Dismiss Pursuant to Rule 41, filed May 5, 2011 (Doc. 148)("Motion"). Consistent with the Amended Order of Reference issued in this case on December 14, 2009, the Honorable Karen B. Molzen, Chief United States Magistrate Judge, filed a Report and Recommendation under 28 U.S.C. §§ 636(b)(1)(B), (b)(3), and Virginia Beach Fed. Sav. & Loan Ass'n v. Wood, 901 F.2d 849 (10th Cir. 1990), concluding and recommending that the Court deny the Motion. See Report and Recommendation, filed October 11, 2011 (Doc. 183). The primary issue is whether the Court should dismiss Plaintiff Patricia Martinez' Amended Complaint with prejudice for her failure to prosecute this case for several months.

P. Martinez, proceeding pro se, has filed a document "stat[ing her] views of the record" that conflict with Chief Judge Molzen's, expressing her continuing dispute with "allegations that [she] delayed in any way to prosecute [her case]," complaining of the "onesideness of that document," and taking issue with Chief Judge Molzen's statements indicating that P. Martinez appears to be

motivated by a desire to harass Defendant Michael Martinez by making frivolous filings to which he is required to respond. Objection to Doc. 183 Statements - For the Record at 1-2, filed October 28, 2011 (Doc. 190)(“Objection”). P. Martinez states in her Objection, however, that she does “not object” to Chief Judge Molzen’s recommendation to deny dismissal of P. Martinez’s suit on the basis of failure to prosecute, and states that she “is not seeking review” of Chief Judge Molzen’s Report and Recommendation. See Objection at 1. The Defendants have not filed any objections. The Court agrees with Chief Judge Molzen’s analysis that the Court should not dismiss the case with prejudice for failure to prosecute, because the Court entered an Order permitting P. Martinez to conduct discovery until August 30, 2011, and she has acted on that Order. The Court, however, does not believe that footnote 2 was necessary to the disposition of this Motion, see Report and Recommendation at 2 n.2, and will not adopt that portion of the Report and Recommendation.

IT IS ORDERED that the Defendants’ Motion to Dismiss Pursuant to Rule 41, filed May 5, 2011 (Doc. 148) is denied for the reasons stated in Judge Molzen’s Report and Recommendation, filed October 11, 2011 (Doc. 183), which the Court adopts with the exception of footnote 2.



UNITED STATES DISTRICT JUDGE

Parties and counsel:

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Plaintiff pro se

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